

Senate Study Bill 1002

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON ANGELO)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to telecommunications, including jurisdiction and
2 territory issues for the utilities board, board review of
3 regulated rates and long distance interconnection charges,
4 directory assistance issues, price regulation for local
5 exchange carriers, broadband investments, low-income program
6 credits, making appropriations and providing civil penalties.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 1604SC 80
9 jj/cl/14

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1 1 Section 1. Section 476.1, Code 2003, is amended to read as
1 2 follows:
1 3 476.1 APPLICABILITY OF AUTHORITY == DEFINITIONS.
1 4 1. The utilities board within the utilities division of
1 5 the department of commerce shall regulate the rates and
1 6 services of public utilities to the extent and in the manner
1 7 hereinafter provided in this chapter.
1 8 2. As used in this chapter, "board" unless the context
1 9 otherwise requires:
1 10 a. "Board" or "utilities board" means the utilities board
1 11 within the utilities division of the department of commerce.
1 12 As used in this chapter, "public
1 13 b. "Public utility" shall include any person, partnership,
1 14 business association, or corporation, domestic or foreign,
1 15 owning or operating any facilities for any of the following:
1 16 1- (1) Furnishing gas by piped distribution system or
1 17 electricity to the public for compensation.
1 18 2- (2) Furnishing communications services to the public
1 19 for compensation.
1 20 3- (3) Furnishing water by piped distribution system to
1 21 the public for compensation.
1 22 c. "Wholesale telephone services" means services provided
1 23 by a local exchange carrier to another provider of
1 24 communications services pursuant to section 476.101 or 477.13.
1 25 3. a. The jurisdiction of the board under this chapter
1 26 shall include rate regulation of the provision of wholesale
1 27 telephone services provided by telephone companies. The
1 28 jurisdiction of the board under this chapter shall not include
1 29 rate regulation of the retail telephone services provided by
1 30 telephone companies.
1 31 b. Mutual telephone companies in which at least fifty
1 32 percent of the users are owners, co-operative telephone
1 33 corporations or associations, telephone companies having less
1 34 than fifteen thousand customers and less than fifteen thousand
1 35 access lines, municipally owned electric, gas, and
2 1 water utilities, and unincorporated villages which that own
2 2 their own distribution systems are not subject to the rate
2 3 regulation provided for in this chapter.
2 4 c. This chapter does not apply to waterworks having less
2 5 than two thousand customers, municipally owned waterworks,
2 6 joint water utilities established pursuant to chapter 389,
2 7 rural water districts incorporated and organized pursuant to
2 8 chapters 357A and 504A, cooperative water associations
2 9 incorporated and organized pursuant to chapter 499, or to a
2 10 person furnishing electricity to five or fewer customers
2 11 either by secondary line or from an alternate energy
2 12 production facility or small hydro facility, from electricity
2 13 that is produced primarily for the person's own use.
2 14 A telephone company otherwise exempt from rate regulation
2 15 and having telephone exchange facilities which cross state
2 16 lines may elect, in a writing filed with the board, to have
2 17 its rates regulated by the board. When a written election has
2 18 been filed with the board, the board shall assume rate

2 19 regulation jurisdiction over the company.
2 20 4. The jurisdiction of the board under this chapter shall
2 21 include efforts designed to promote the use of energy
2 22 efficiency strategies by rate or service-regulated gas and
2 23 electric utilities.
2 24 Sec. 2. Section 476.3, subsections 1 and 2, Code 2003, are
2 25 amended to read as follows:
2 26 1. a. A public utility shall furnish reasonably adequate
2 27 service at rates and charges in accordance with tariffs filed
2 28 with the board.
2 29 b. When there is filed with the board by any person or
2 30 body politic, or filed by the board upon its own motion, a
2 31 written complaint requesting the board to determine the
2 32 reasonableness of the regulated rates, charges, schedules,
2 33 service, regulations, or anything done or omitted to be done
2 34 by a public utility subject to this chapter in contravention
2 35 of this chapter, the written complaint shall be forwarded by
3 1 the board to the public utility, which shall be called upon to
3 2 satisfy the complaint or to answer it in writing within a
3 3 reasonable time to be specified by the board.
3 4 c. Copies of the written complaint forwarded by the board
3 5 to the public utility and copies of all correspondence from
3 6 the public utility in response to the complaint shall be
3 7 provided by the board in an expeditious manner to the consumer
3 8 advocate.
3 9 d. If the board determines the public utility's response
3 10 is inadequate and there appears to be any reasonable ground
3 11 for investigating the complaint, the board shall promptly
3 12 initiate a formal proceeding.
3 13 e. If the consumer advocate determines the public
3 14 utility's response to the complaint is inadequate, the
3 15 consumer advocate may file a petition with the board which
3 16 shall promptly initiate a formal proceeding if the board
3 17 determines that there is any reasonable ground for
3 18 investigating the complaint.
3 19 f. The complainant or the public utility also may petition
3 20 the board to initiate a formal proceeding which petition shall
3 21 be granted if the board determines that there is any
3 22 reasonable ground for investigating the complaint. The formal
3 23 proceeding may be initiated at any time by the board on its
3 24 own motion.
3 25 g. If a proceeding is initiated upon petition filed by the
3 26 consumer advocate, complainant, or the public utility, or upon
3 27 the board's own motion, the board shall set the case for
3 28 hearing and give notice as it deems appropriate.
3 29 h. When the board, after a hearing held after reasonable
3 30 notice, finds a public utility's regulated rates, charges,
3 31 schedules, service, or regulations are unjust, unreasonable,
3 32 discriminatory, or otherwise in violation of any provision of
3 33 law, the board shall determine just, reasonable, and
3 34 nondiscriminatory rates, charges, schedules, service, or
3 35 regulations to be observed and enforced.
4 1 2. a. If, as a result of a review procedure conducted
4 2 under section 476.31, a review conducted under section 476.32,
4 3 a special audit, an investigation by division staff, or an
4 4 investigation by the consumer advocate, a petition is filed
4 5 with the board by the consumer advocate, alleging that a
4 6 utility's rates are excessive, the disputed amount shall be
4 7 specified in the petition.
4 8 b. The public utility shall, within the time prescribed by
4 9 the board, file a bond or undertaking approved by the board
4 10 conditioned upon the refund in a manner prescribed by the
4 11 board of amounts collected after the date of filing of the
4 12 petition in excess of rates or charges finally determined by
4 13 the board to be lawful.
4 14 c. If upon hearing the board finds that the utility's
4 15 rates are unlawful, the board shall order a refund, with
4 16 interest, of amounts collected after the date of filing of the
4 17 petition that are determined to be in excess of the amounts
4 18 ~~which that~~ would have been collected under the rates finally
4 19 approved. However, the board shall not order a refund that is
4 20 greater than the amount specified in the petition, plus
4 21 interest, and if the board fails to render a decision within
4 22 ten months following the date of filing of the petition, the
4 23 board shall not order a refund of any excess amounts that are
4 24 collected after the expiration of that ten-month period and
4 25 prior to the date the decision is rendered.
4 26 d. Notwithstanding the provisions of this subsection, the
4 27 consumer advocate shall not file a petition under this
4 28 subsection that alleges a local exchange carrier's rates are
4 29 excessive while the local exchange carrier is participating in

4 30 a price regulation plan approved by the board pursuant to
4 31 section ~~476.97~~ 476.99A.
4 32 Sec. 3. Section 476.6, subsections 2 through 4, Code 2003,
4 33 are amended by striking the subsections.
4 34 Sec. 4. Section 476.11, Code 2003, is amended to read as
4 35 follows:
5 1 476.11 TELEPHONE TOLL CONNECTIONS.
5 2 1. Whenever toll connection between the lines or
5 3 facilities of two or more telephone companies has been made,
5 4 or is demanded under the statutes of this state and the
5 5 companies concerned cannot agree as to the terms, ~~and~~
5 6 procedures, ~~and charges~~ under which toll communications shall
5 7 be interchanged, the board upon complaint in writing, after
5 8 hearing had upon reasonable notice, shall determine such
5 9 terms, ~~and procedures, and charges.~~
5 10 2. ~~Charges by local exchange carriers to long distance~~
5 11 ~~carriers for access shall not exceed the rate charged as of~~
5 12 ~~December 31, 2002. After that date, the charges shall~~
5 13 ~~decrease one-half cent every six months until the access~~
5 14 ~~charge is at a level of not more than four and one-half cents~~
5 15 ~~per minute.~~
5 16 3. The board may resolve complaints, upon notice and
5 17 hearing, that a utility, operating under section 476.29, has
5 18 failed to provide just, reasonable, and nondiscriminatory
5 19 arrangements for interconnection of its telecommunications
5 20 services with another telecommunications provider.
5 21 Sec. 5. Section 476.29, subsection 5, Code 2003, is
5 22 amended to read as follows:
5 23 5. a. Each local exchange utility has an obligation to
5 24 serve all eligible customers within the utility's service
5 25 territory, unless explicitly excepted from this requirement by
5 26 the board.
5 27 b. ~~Where two or more utilities, including competitive~~
5 28 ~~local exchange carriers, serve the same territory and no~~
5 29 ~~carrier desires to serve an eligible customer, the board~~
5 30 ~~shall, upon request of an eligible customer or of a carrier,~~
5 31 ~~determine which carrier shall be directed to provide service.~~
5 32 Sec. 6. Section 476.51, Code 2001, is amended to read as
5 33 follows:
5 34 476.51 CIVIL PENALTY.
5 35 1. A public utility ~~which that~~, after written notice by
6 1 the board of a specific violation, violates the same provision
6 2 of this chapter, the same rule adopted by the board, or the
6 3 same provision of an order lawfully issued by the board, is
6 4 subject to a civil penalty, which may be levied by the board,
6 5 of not less than one hundred dollars nor more than two
6 6 thousand five hundred dollars per violation.
6 7 2. A public utility ~~which that~~ willfully, after written
6 8 notice by the board of a specific violation, violates the same
6 9 provision of this chapter, the same rule adopted by the board,
6 10 or the same provision of an order lawfully issued by the
6 11 board, is subject to a civil penalty, which may be levied by
6 12 the board, of not less than one thousand dollars nor more than
6 13 ten thousand dollars per violation. For the purposes of this
6 14 section, "willful" means knowing and deliberate, with a
6 15 specific intent to violate.
6 16 3. a. Each violation is a separate offense.
6 17 b. In the case of a continuing violation, each day a
6 18 violation continues, after the time specified for compliance
6 19 in the written notice by the board, is a separate and distinct
6 20 offense.
6 21 4. Any civil penalty may be compromised by the board. In
6 22 determining the amount of the penalty, or the amount agreed
6 23 upon in a compromise, the board may consider the
6 24 appropriateness of the penalty in relation to the size of the
6 25 public utility, the gravity of the violation, and the good
6 26 faith of the public utility in attempting to achieve
6 27 compliance following notification of a violation, and any
6 28 other relevant factors.
6 29 5. The written notice given by the board to a public
6 30 utility under this section shall specify an appropriate time
6 31 for compliance.
6 32 6. a. Civil penalties collected pursuant to this section
6 33 ~~from public utilities providing electric or gas service shall~~
6 34 ~~be forwarded by the executive secretary of the board to the~~
6 35 ~~treasurer of state, to be credited to the general fund, of the~~
7 1 ~~state and are appropriated to the department of human rights~~
7 2 to be used only for the low income home energy assistance
7 3 program and the weatherization assistance program administered
7 4 by the division of community action agencies of the department
7 5 of human rights.

7 6 b. Civil penalties collected pursuant to this section from
7 7 public utilities providing telecommunications service shall be
7 8 forwarded to the treasurer of state, credited to the general
7 9 fund, and appropriated to the utilities division of the
7 10 department of commerce to be used only for improvements in
7 11 telecommunications services in geographic areas served by the
7 12 company making the payment as determined by the board.

7 13 c. Penalties paid by a rate-regulated public utility
7 14 pursuant to this section shall be excluded from the utility's
7 15 costs when determining the utility's revenue requirement, and
7 16 shall not be included either directly or indirectly in the
7 17 utility's rates or charges to customers.

7 18 Sec. 7. Section 476.96, unnumbered paragraph 1, Code 2003,
7 19 is amended to read as follows:

7 20 As used in ~~section sections~~ 476.95, ~~this section, and~~
7 21 ~~sections 476.97 through 476.102~~, unless the context otherwise
7 22 requires:

7 23 Sec. 8. NEW SECTION. 476.99A LOCAL EXCHANGE CARRIER
7 24 PRICE REGULATION.

7 25 1. A local exchange carrier with fewer than five hundred
7 26 thousand access lines in this state shall have the option to
7 27 be regulated pursuant to this section.

7 28 2. A local exchange carrier that elects to become price=
7 29 regulated under this section shall give written notice to the
7 30 board of an election to become price-regulated under this
7 31 section not less than thirty days prior to the date such
7 32 regulation is to commence.

7 33 3. Upon election of a local exchange carrier to become
7 34 price-regulated under this section, the carrier shall reduce
7 35 its rates for basic local telephone service an average of
8 1 three percent. In lieu of the three percent reduction, the
8 2 local exchange carrier may establish its rates for basic local
8 3 telephone service in a rate proceeding under section 476.3 or
8 4 476.6 commenced after July 1, 1995.

8 5 4. Initial prices for basic communications services, other
8 6 than basic local telephone service, shall be set at the rates
8 7 in effect as of the first of July prior to the date price
8 8 regulation under this section is to commence.

8 9 5. a. A price-regulated local exchange carrier shall not
8 10 increase its rates for basic communications services for a
8 11 period of twelve months after electing to become price=
8 12 regulated. To the extent necessary, rates for basic services
8 13 may be increased to carry out the purpose of any rules that
8 14 may be adopted by the board relating to the terms and
8 15 conditions of unbundled services and interconnection. A
8 16 price-regulated local exchange carrier may increase its rates
8 17 for basic communications services following the initial
8 18 twelve-month period, to the extent that the change in its
8 19 aggregate revenue weighted prices does not exceed the most
8 20 recent annual change in the gross domestic product price
8 21 index, as published by the federal government. If application
8 22 of that formula achieves a negative result, prices shall be
8 23 reduced so that the cumulative price change for basic
8 24 services, including prior price reductions in these services,
8 25 achieves the negative result. The board by rule may adopt
8 26 different measures of inflation if they are found to be more
8 27 reflective of the individual price-regulated carriers.

8 28 b. Price increases for basic communications services that
8 29 are permitted under this section may be deferred and
8 30 accumulated for a maximum of three years into a single price
8 31 increase, provided that a deferred and accumulated price
8 32 increase under this subsection shall not at any time exceed
8 33 six percent. A price decrease for basic communications
8 34 services shall not be deferred or accumulated, except that
8 35 price decreases of less than two percent may be deferred by
9 1 the local exchange carrier for one year. A price decrease
9 2 required under this section may be offset by a price increase
9 3 for a basic communications service that would have been
9 4 permitted under this section in the previous twelve=month
9 5 period, but that was deferred by the local exchange carrier.
9 6 A rate change pursuant to this section may take effect thirty
9 7 days after the notification of the board and consumers.

9 8 c. A price-regulated local exchange carrier shall not
9 9 increase its aggregate revenue weighted prices for nonbasic
9 10 communications services more than six percent in any twelve=
9 11 month period.

9 12 d. A price-regulated local exchange carrier may reduce the
9 13 price for any basic communications service, to an amount not
9 14 less than the total service long-run incremental cost for
9 15 basic communications service on one day's notice filed with
9 16 the board. For purposes of this section, "total service long=

run incremental costs" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

e. A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days' prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96.

f. A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and by an additional twenty-five percent each of the next three years.

6. A local exchange carrier shall notify customers of a rate change under this section at least thirty days prior to the effective date of the rate change.

7. A local exchange carrier that elects to become price-regulated under this section shall also be subject to the following:

a. The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

b. All regulated services shall be provided pursuant to board-approved tariffs.

c. All new regulated service offerings shall be reported to the board.

d. Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this paragraph, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

8. The board may review a local exchange carrier's operation under this section, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price-regulation requirements in this section as a result of the specific carrier review, with the following limitations:

a. Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

b. Proposals for modifications under this subsection are limited to no more than one every three years.

The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and nonbasic communications services of the carrier. In reviewing a carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

9. This section shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

10. Upon the request of a local exchange carrier, the board shall, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts that would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the

11 28 request. The decision shall be effective immediately.
11 29 The board shall determine the rate of interest to be paid
11 30 by a public utility to persons receiving refunds. The
11 31 interest rate to be applied to refunds of moneys collected
11 32 subject to refund under this section is one percent per annum
11 33 plus the average quarterly interest rate at commercial banks
11 34 for twenty-four-month loans for personal expenditures, as
11 35 determined by the board, compounded annually. The board shall
12 1 consider federal reserve statistical release G.19 or its
12 2 equivalent when determining interest to be paid under this
12 3 section.

12 4 11. The board and the consumer advocate may employ
12 5 additional temporary staff, or may contract for professional
12 6 services with persons who are not state employees, as the
12 7 board and consumer advocate deem necessary to review a local
12 8 exchange carrier's operations, proposal for modifications,
12 9 rate change proposal, or proposed changes in aggregate revenue
12 10 weighted prices pursuant to this section. Beginning July 1,
12 11 2003, there is appropriated out of any funds in the state
12 12 treasury not otherwise appropriated, such sums as may be
12 13 necessary to enable the board to hire additional staff and
12 14 contract for services under this section. The costs of the
12 15 additional staff and services shall be assessed to the local
12 16 exchange carrier pursuant to the procedures in sections 475A.6
12 17 and 476.10.

12 18 Sec. 9. BROADBAND INVESTMENT REQUIREMENT == LOW-INCOME
12 19 PROGRAM CREDIT. A telephone company that is subject to rate
12 20 regulation jurisdiction of the board prior to the effective
12 21 date of this Act and that increases retail rates for basic
12 22 communication services as defined in section 476.96 within two
12 23 years of the effective date of this Act shall invest fifty per
12 24 cent of its retail rate increase in the provision of high=
12 25 speed broadband services in its service area.

12 26 A telephone company subject to this provision shall also
12 27 apply a credit equal to the amount of the retail rate increase
12 28 to the monthly local exchange service rate for qualified
12 29 applicants for low-income lifeline assistance programs.

12 30 This provision shall remain in effect until expressly
12 31 repealed.

12 32 Sec. 10. Sections 476.97, 476.98, and 476.99, Code 2003,
12 33 are repealed.

12 34 EXPLANATION

12 35 This bill makes amendments to Code chapter 476 regarding
13 1 public utilities, and specifically regarding
13 2 telecommunications provisions.

13 3 The bill adds a definition of "wholesale telephone
13 4 services" to Code section 476.1, deletes existing Code
13 5 language pertaining to telephone companies, and divides
13 6 existing Code language into subsections, paragraphs, and
13 7 subparagraphs.

13 8 The bill divides existing Code language in subsection 1 of
13 9 Code section 476.3 into paragraphs, and specifies that the
13 10 utilities board shall determine the reasonableness of
13 11 regulated rates under that subsection, rather than just rates
13 12 in general, as provided under existing Code language.

13 13 Subsections 2 through 4 of Code section 476.6, pertaining
13 14 to provision of directory assistance service and charges, are
13 15 stricken by the bill.

13 16 The bill adds language to Code section 476.11 limiting
13 17 charges for long distance access by carriers, and divides the
13 18 new and existing Code language into subsections.

13 19 The bill adds a provision to Code section 476.29 providing
13 20 that the utilities board will determine which carrier will
13 21 serve a customer when two or more carriers serve the same
13 22 territory and no carrier desires to serve the eligible
13 23 customer. The bill also divides the new and existing Code
13 24 language into paragraphs.

13 25 A new provision is added to Code section 476.51, relating
13 26 to civil penalties for violations of certain public utility
13 27 provisions, providing that penalties assessed to
13 28 telecommunications companies will be forwarded to the state
13 29 treasurer for the general fund and appropriated to the
13 30 utilities board to be used only for telecommunications
13 31 improvements in the service area served by the company paying
13 32 the penalty. Another penalty provision is amended to provide
13 33 that the penalties paid by gas and electric companies will be
13 34 credited to low-income energy assistance and weatherization
13 35 programs. The new and existing Code language is also divided
14 1 into subsections and paragraphs.

14 2 Code sections 476.97, 476.98, and 476.99, relating to price
14 3 regulation for telecommunications services, are repealed.

14 4 Related changes are made to Code section 476.96 and to Code
14 5 section 476.3 to reflect these changes. Existing and new Code
14 6 provisions added in 2002 to subsection 11 of Code section
14 7 476.97 are retained, and are placed in a separate Code
14 8 section, 476.99A.
14 9 An additional, noncodified provision is included in the
14 10 bill that provides that a telephone company subject to rate
14 11 regulation jurisdiction of the board that raises its retail
14 12 rates within two years of the enactment of this legislation
14 13 shall invest 50 percent of the rate increase in high-speed
14 14 broadband services in its service area. The telephone company
14 15 shall also apply a special credit for low-income programs.
14 16 LSB 1604SC 80
14 17 jj/cl/14